1	AMENDMENTS TO HEALTH INSURANCE
2	COVERAGE IN STATE CONTRACTS
3	2010 GENERAL SESSION
4	STATE OF UTAH
5	Chief Sponsor: James A. Dunnigan
6 7	Senate Sponsor: Gene Davis
8	LONG TITLE
9	General Description:
10	This bill amends provisions related to the requirement that contractors with certain
11	state entities must provide qualified health insurance to their employees and the
12	dependents of the employees who work or reside in the state.
13	Highlighted Provisions:
14	This bill:
15	<ul> <li>clarifies that the application of a waiting period for health insurance may not</li> </ul>
16	exceed the first of the month following 90 days of the date of hire;
17	<ul> <li>clarifies that the qualified health insurance coverage must be offered to employees</li> </ul>
18	and dependents who work or reside in the state;
19	<ul> <li>clarifies that the qualified health insurance coverage that must be offered is a</li> </ul>
20	minimum standard and an employer may offer greater coverage;
21	<ul> <li>amends the definition of qualified health insurance coverage to clarify the</li> </ul>
22	standards;
23	<ul> <li>amends the enforcement provisions to provide protections for good faith</li> </ul>
24	compliance; and
25	<ul> <li>clarifies how an employer offering a defined contribution arrangement may comply</li> </ul>
26	with state contract requirements.
27	Monies Appropriated in this Bill:
28	None

29

**Other Special Clauses:** 

30	None
31	<b>Utah Code Sections Affected:</b>
32	AMENDS:
33	17B-2a-818.5, as enacted by Laws of Utah 2009, Chapter 13
34	19-1-206, as enacted by Laws of Utah 2009, Chapter 13
35	63A-5-205, as last amended by Laws of Utah 2009, Chapter 13
36	<b>63C-9-403</b> , as enacted by Laws of Utah 2009, Chapter 13
37	<b>72-6-107.5</b> , as enacted by Laws of Utah 2009, Chapter 13
38	<b>79-2-404</b> , as enacted by Laws of Utah 2009, Chapter 13
39	ENACTS:
10	<b>31A-30-209</b> , Utah Code Annotated 1953
<b>1</b> 1	
12	Be it enacted by the Legislature of the state of Utah:
13	Section 1. Section 17B-2a-818.5 is amended to read:
14	17B-2a-818.5. Contracting powers of public transit districts Health insurance
15	coverage.
16	(1) For purposes of this section:
<b>1</b> 7	(a) "Employee" means an "employee," "worker," or "operative" as defined in Section
18	34A-2-104 who:
19	(i) works at least 30 hours per calendar week; and
50	(ii) meets employer eligibility waiting requirements for health care insurance which
51	may not exceed the first day of the calendar month following 90 days from the date of hire.
52	(b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.
53	(c) "Qualified health insurance coverage" means [a health benefit plan that] at the time
54	the contract is entered into or renewed:
55	[(i) (A) provides coverage that is actuarially equivalent to the current benefit plan
56	determined by the Children's Health Insurance Program under Section 26-40-106; and]
57	[(B) under which the employer pays at least 50% of the premium for the employee and

H.B. 20

**Enrolled Copy** 

58	the dependents of the employee;]
59	[(ii) (A) is a federally qualified high deductible health plan that has:]
60	[(I) the lowest deductible permitted for a federally qualified high deductible health
61	<del>plan; and</del> ]
62	[(II) an out of pocket maximum that does not exceed three times the amount of the
63	annual deductible; and]
64	[(B) under which the employer pays 75% of the premium for the employee and the
65	dependents of the employee; or]
66	[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan
67	determined under Subsection (1)(c)(i); and]
68	[(B) under which the employer pays at least 75% of the premium of the employee and
69	the dependents of the employee.]
70	(i) a health benefit plan and employer contribution level with a combined actuarial
71	value at least actuarially equivalent to the combined actuarial value of the benchmark plan
72	determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a),
73	and a contribution level of 50% of the premium for the employee and the dependents of the
74	employee who reside or work in the state, in which:
75	(A) the employer pays at least 50% of the premium for the employee and the
76	dependents of the employee who reside or work in the state; and
77	(B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):
78	(I) rather that the benchmark plan's deductible, and the benchmark plan's
79	out-of-pocket maximum based on income levels:
80	(Aa) the deductible is \$750 per individual and \$2,250 per family; and
81	(Bb) the out-of-pocket maximum is \$3,000 per individual and \$9,000 per family;
82	(II) dental coverage is not required; and
83	(III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do
84	not apply; or
85	(ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a

86	deductible that is either:
87	(I) the lowest deductible permitted for a federally qualified high deductible health
88	plan; or
89	(II) a deductible that is higher than the lowest deductible permitted for a federally
90	qualified high deductible health plan, but includes an employer contribution to a health
91	savings account in a dollar amount at least equal to the dollar amount difference between the
92	lowest deductible permitted for a federally qualified high deductible plan and the deductible
93	for the employer offered federally qualified high deductible plan;
94	(B) an out-of-pocket maximum that does not exceed three times the amount of the
95	annual deductible; and
96	(C) under which the employer pays 75% of the premium for the employee and the
97	dependents of the employee who work or reside in the state.
98	(d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
99	(2) (a) Except as provided in Subsection (3), this section applies to [all contracts] a
100	design or construction contract entered into by the public transit district on or after July 1,
101	2009, [if:] and to a prime contractor or to a subcontractor in accordance with Subsection
102	<u>(2)(b).</u>
103	[(a) the contract is for design or construction; and]
104	(b) (i) A prime contractor is subject to this section if the prime contract is in the
105	amount of \$1,500,000 or greater[; or].
106	(ii) A subcontractor is subject to this section if a subcontract is in the amount of
107	\$750,000 or greater.
108	(3) This section does not apply if:
109	(a) the application of this section jeopardizes the receipt of federal funds;
110	(b) the contract is a sole source contract; or
111	(c) the contract is an emergency procurement.
112	(4) (a) This section does not apply to a change order as defined in Section 63G-6-102
113	or a modification to a contract, when the contract does not meet the initial threshold required

114	by Subsection	(2)
-----	---------------	-----

(b) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection (2) is guilty of an infraction.

- (5) (a) A contractor subject to Subsection (2) shall demonstrate to the public transit district that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employee's dependents during the duration of the contract.
- (b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor shall demonstrate to the public transit district that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employee's dependents during the duration of the contract.
- (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with [administrative rules] an ordinance adopted by the public transit district under Subsection (6).
- (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (5)(b).
- (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the duration of the contract is subject to penalties in accordance with [administrative rules] an ordinance adopted by the public transit district under Subsection (6).
- (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (5)(a).
  - (6) The public transit district shall adopt [administrative rules] ordinances:
- [(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;]
  [(b)] (a) in coordination with:
  - (i) the Department of Environmental Quality in accordance with Section 19-1-206;
  - (ii) the Department of Natural Resources in accordance with Section 79-2-404;
  - (iii) the State Building Board in accordance with Section 63A-5-205;
- 141 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403; <u>and</u>

142	(v) the Department of Transportation in accordance with Section 72-6-107.5; and
143	[(vi) the Legislature's Administrative Rules Review Committee; and]
144	[(c)] (b) which establish:
145	(i) the requirements and procedures a contractor must follow to demonstrate to the
146	public transit district compliance with this section which shall include:
147	(A) that a contractor will not have to demonstrate compliance with Subsection (5)(a)
148	or (b) more than twice in any 12-month period; and
149	(B) that the actuarially equivalent determination required in Subsection (1) is met by
150	the contractor if the contractor provides the department or division with a written statement of
151	actuarial equivalency from either:
152	(I) the Utah Insurance Department; [or]
153	(II) an actuary selected by the contractor or the contractor's insurer; [and] or
154	(III) an underwriter who is responsible for developing the employer group's premium
155	rates;
156	(ii) the penalties that may be imposed if a contractor or subcontractor intentionally
157	violates the provisions of this section, which may include:
158	(A) a three-month suspension of the contractor or subcontractor from entering into
159	future contracts with the public transit district upon the first violation;
160	(B) a six-month suspension of the contractor or subcontractor from entering into
161	future contracts with the public transit district upon the second violation;
162	(C) an action for debarment of the contractor or subcontractor in accordance with
163	Section 63G-6-804 upon the third or subsequent violation; and
164	(D) monetary penalties which may not exceed 50% of the amount necessary to
165	purchase qualified health insurance coverage for employees and dependents of employees of
166	the contractor or subcontractor who were not offered qualified health insurance coverage
167	during the duration of the contract[-]; and
168	(iii) a website on which the district shall post the benchmark for the qualified health
169	insurance coverage identified in Subsection (1)(c)(i).

(7) (a) (i) In addition to the penalties imposed under Subsection (6)[(e)](b)(ii), a
contractor or subcontractor who <u>intentionally</u> violates the provisions of this section shall be
liable to the employee for health care costs [not covered by insurance.] that would have been
covered by qualified health insurance coverage.
(ii) An employer has an affirmative defense to a cause of action under Subsection
(7)(a)(i) if:
(A) the employer relied in good faith on a written statement of actuarial equivalency
provided by an:
(I) actuary; or
(II) underwriter who is responsible for developing the employer group's premium rates;
<u>or</u>
(B) a department or division determines that compliance with this section is not
required under the provisions of Subsection (3) or (4).
(b) An employee has a private right of action only against the employee's employer to
enforce the provisions of this Subsection (7).
(8) Any penalties imposed and collected under this section shall be deposited into the
Medicaid Restricted Account created in Section 26-18-402.
(9) The failure of a contractor or subcontractor to provide <u>qualified</u> health insurance
<u>coverage</u> as required by this section:
(a) may not be the basis for a protest or other action from a prospective bidder, offeror,
or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
Legal and Contractual Remedies; and
(b) may not be used by the procurement entity or a prospective bidder, offeror, or
contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
or construction.
Section 2. Section <b>19-1-206</b> is amended to read:
19-1-206. Contracting powers of department Health insurance coverage.
(1) For purposes of this section:

198	(a) "Employee" means an "employee," "worker," or "operative" as defined in Section
199	34A-2-104 who:
200	(i) works at least 30 hours per calendar week; and
201	(ii) meets employer eligibility waiting requirements for health care insurance which
202	may not exceed the first day of the calendar month following 90 days from the date of hire.
203	(b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.
204	(c) "Qualified health insurance coverage" means [a health benefit plan that] at the time
205	the contract is entered into or renewed:
206	[(i) (A) provides coverage that is actuarially equivalent to the current benefit plan
207	determined by the Children's Health Insurance Program under Section 26-40-106; and]
208	[(B) under which the employer pays at least 50% of the premium for the employee and
209	the dependents of the employee;]
210	[(ii) (A) is a federally qualified high deductible health plan that has:]
211	[(I) the lowest deductible permitted for a federally qualified high deductible health
212	plan; and]
213	[(II) an out of pocket maximum that does not exceed three times the amount of the
214	annual deductible; and]
215	[(B) under which the employer pays 75% of the premium for the employee and the
216	dependents of the employee; or]
217	[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan
218	determined under Subsection (1)(c)(i); and]
219	[(B) under which the employer pays at least 75% of the premium of the employee and
220	the dependents of the employee.]
221	(i) a health benefit plan and employer contribution level with a combined actuarial
222	value at least actuarially equivalent to the combined actuarial value of the benchmark plan
223	determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a),
224	and a contribution level of 50% of the premium for the employee and the dependents of the
225	employee who reside or work in the state, in which:

226	(A) the employer pays at least 50% of the premium for the employee and the
227	dependents of the employee who reside or work in the state; and
228	(B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):
229	(I) rather that the benchmark plan's deductible, and the benchmark plan's
230	out-of-pocket maximum based on income levels:
231	(Aa) the deductible is \$750 per individual and \$2,250 per family; and
232	(Bb) the out-of-pocket maximum is \$3,000 per individual and \$9,000 per family;
233	(II) dental coverage is not required; and
234	(III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do
235	not apply; or
236	(ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a
237	deductible that is either:
238	(I) the lowest deductible permitted for a federally qualified high deductible health
239	plan; or
240	(II) a deductible that is higher than the lowest deductible permitted for a federally
241	qualified high deductible health plan, but includes an employer contribution to a health
242	savings account in a dollar amount at least equal to the dollar amount difference between the
243	lowest deductible permitted for a federally qualified high deductible plan and the deductible
244	for the employer offered federally qualified high deductible plan;
245	(B) an out-of-pocket maximum that does not exceed three times the amount of the
246	annual deductible; and
247	(C) under which the employer pays 75% of the premium for the employee and the
248	dependents of the employee who work or reside in the state.
249	(d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
250	(2) (a) Except as provided in Subsection (3), this section applies to [all contracts] a
251	design or construction contract entered into by or delegated to the department or a division or
252	board of the department on or after July 1, 2009, [if:] and to a prime contractor or
253	subcontractor in accordance with Subsection (2)(b)

254	[(a) the contract is for design or construction; and]
255	(b) (i) A prime contractor is subject to this section if the prime contract is in the
256	amount of \$1,500,000 or greater[ <del>; or</del> ].
257	(ii) A subcontractor is subject to this section if a subcontract is in the amount of
258	\$750,000 or greater.
259	(3) This section does not apply to contracts entered into by the department or a
260	division or board of the department if:
261	(a) the application of this section jeopardizes the receipt of federal funds;
262	(b) the contract or agreement is between:
263	(i) the department or a division or board of the department; and
264	(ii) (A) another agency of the state;
265	(B) the federal government;
266	(C) another state;
267	(D) an interstate agency;
268	(E) a political subdivision of this state; or
269	(F) a political subdivision of another state;
270	(c) the executive director determines that applying the requirements of this section to a
271	particular contract interferes with the effective response to an immediate health and safety
272	threat from the environment; or
273	(d) the contract is:
274	(i) a sole source contract; or
275	(ii) an emergency procurement.
276	(4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
277	or a modification to a contract, when the contract does not meet the initial threshold required
278	by Subsection (2).
279	(b) A person who intentionally uses change orders or contract modifications to
280	circumvent the requirements of Subsection (2) is guilty of an infraction.
281	(5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive

director that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents during the duration of the contract.

- (b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall demonstrate to the executive director that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the contract.
- (c) (i) (A) A contractor who fails to comply with Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).
- (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (5)(b).
- (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).
- (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (5)(a).
  - (6) The department shall adopt administrative rules:
  - (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
  - (b) in coordination with:
- 302 (i) a public transit district in accordance with Section 17B-2a-818.5;
  - (ii) the Department of Natural Resources in accordance with Section 79-2-404;
- 304 (iii) the State Building Board in accordance with Section 63A-5-205;
  - (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;
  - (v) the Department of Transportation in accordance with Section 72-6-107.5; and
- (vi) the Legislature's Administrative Rules Review Committee; and
- 308 (c) which establish:

282

283

284

285

286

287

288

289

290

291

292

293

294

295

296

297

298

299

300

301

303

305

306

(i) the requirements and procedures a contractor must follow to demonstrate to the

310	public transit district compliance with this section which shall include:
311	(A) that a contractor will not have to demonstrate compliance with Subsection (5)(a)
312	or (b) more than twice in any 12-month period; and
313	(B) that the actuarially equivalent determination required in Subsection (1) is met by
314	the contractor if the contractor provides the department or division with a written statement of
315	actuarial equivalency from either:
316	(I) the Utah Insurance Department [or];
317	(II) an actuary selected by the contractor or the contractor's insurer; $[and]$ or
318	(III) an underwriter who is responsible for developing the employer group's premium
319	rates;
320	(ii) the penalties that may be imposed if a contractor or subcontractor intentionally
321	violates the provisions of this section, which may include:
322	(A) a three-month suspension of the contractor or subcontractor from entering into
323	future contracts with the state upon the first violation;
324	(B) a six-month suspension of the contractor or subcontractor from entering into
325	future contracts with the state upon the second violation;
326	(C) an action for debarment of the contractor or subcontractor in accordance with
327	Section 63G-6-804 upon the third or subsequent violation; and
328	(D) notwithstanding Section 19-1-303, monetary penalties which may not exceed 50%
329	of the amount necessary to purchase qualified health insurance coverage for an employee and
330	the dependents of an employee of the contractor or subcontractor who was not offered
331	qualified health insurance coverage during the duration of the contract[:]; and
332	(iii) a website on which the department shall post the benchmark for the qualified
333	health insurance coverage identified in Subsection (1)(c)(i).
334	(7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or
335	subcontractor who intentionally violates the provisions of this section shall be liable to the
336	employee for health care costs [not covered by insurance.] that would have been covered by
337	qualified health insurance coverage.

338	(ii) An employer has an affirmative defense to a cause of action under Subsection
339	(7)(a)(i) if:
340	(A) the employer relied in good faith on a written statement of actuarial equivalency
341	provided by:
342	(I) an actuary; or
343	(II) an underwriter who is responsible for developing the employer group's premium
344	rates; or
345	(B) the department determines that compliance with this section is not required under
346	the provisions of Subsection (3) or (4).
347	(b) An employee has a private right of action only against the employee's employer to
348	enforce the provisions of this Subsection (7).
349	(8) Any penalties imposed and collected under this section shall be deposited into the
350	Medicaid Restricted Account created in Section 26-18-402.
351	(9) The failure of a contractor or subcontractor to provide <u>qualified</u> health insurance
352	<u>coverage</u> as required by this section:
353	(a) may not be the basis for a protest or other action from a prospective bidder, offeror
354	or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
355	Legal and Contractual Remedies; and
356	(b) may not be used by the procurement entity or a prospective bidder, offeror, or
357	contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
358	or construction.
359	Section 3. Section 31A-30-209 is enacted to read:
360	31A-30-209. State contract requirements Employer default plans.
361	(1) This section applies to an employer who is required to offer its employees a health
362	benefit plan as a condition of qualifying for a state contract under:
363	(a) Section 17B-2a-818.5;
364	(b) Section 19-1-206;
365	(c) Subsection 63A-5-205(3):

H.B. 20	<b>Enrolled Co</b>	рy

366	(d) Section 63C-9-403;
367	(e) Section 72-6-107.5; and
368	(f) Section 79-2-404.
369	(2) An employer described in Subsection (1) shall, when selecting the default plan
370	required in Section 31A-30-204, select a default plan that is "qualified health insurance
371	coverage" as defined in the sections listed in Subsections (1)(a) through (f).
372	Section 4. Section <b>63A-5-205</b> is amended to read:
373	63A-5-205. Contracting powers of director Retainage Health insurance
374	coverage.
375	(1) As used in this section:
376	(a) "Capital developments" has the same meaning as provided in Section 63A-5-104.
377	(b) "Capital improvements" has the same meaning as provided in Section 63A-5-104.
378	(c) "Employee" means an "employee," "worker," or "operative" as defined in Section
379	34A-2-104 who:
380	(i) works at least 30 hours per calendar week; and
381	(ii) meets employer eligibility waiting requirements for health care insurance which
382	may not exceed the first day of the calendar month following 90 days from the date of hire.
383	(d) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.
384	(e) "Qualified health insurance coverage" means [a health benefit plan that] at the time
385	the contract is entered into or renewed:
386	[(i) (A) provides coverage that is actuarially equivalent to the current benefit plan
387	determined by the Children's Health Insurance Program under Section 26-40-106; and]
388	[(B) under which the employer pays at least 50% of the premium for the employee and
389	the dependents of the employee;
390	[(ii) (A) is a federally qualified high deductible health plan that has:]
391	[(I) the lowest deductible permitted for a federally qualified high deductible health
392	<del>plan; and</del> ]
393	[(II) an out of pocket maximum that does not exceed three times the amount of the

394	annual deductible; and]
395	[(B) under which the employer pays 75% of the premium for the employee and the
396	dependents of the employee; or]
397	[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan
398	determined under Subsection (1)(e)(i); and]
399	[(B) under which the employer pays at least 75% of the premium of the employee and
400	the dependents of the employee.]
401	(i) a health benefit plan and employer contribution level with a combined actuarial
402	value at least actuarially equivalent to the combined actuarial value of the benchmark plan
403	determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a),
404	and a contribution level of 50% of the premium for the employee and the dependents of the
405	employee who reside or work in the state, in which:
406	(A) the employer pays at least 50% of the premium for the employee and the
407	dependents of the employee who reside or work in the state; and
408	(B) for purposes of calculating actuarial equivalency under this Subsection (1)(e)(i):
409	(I) rather that the benchmark plan's deductible, and the benchmark plan's
410	out-of-pocket maximum based on income levels:
411	(Aa) the deductible is \$750 per individual and \$2,250 per family; and
412	(Bb) the out-of-pocket maximum is \$3,000 per individual and \$9,000 per family;
413	(II) dental coverage is not required; and
414	(III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do
415	not apply; or
416	(ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a
417	deductible that is either:
418	(I) the lowest deductible permitted for a federally qualified high deductible health
419	plan; or
420	(II) a deductible that is higher than the lowest deductible permitted for a federally
421	qualified high deductible health plan, but includes an employer contribution to a health

422	savings account in a dollar amount at least equal to the dollar amount difference between the
423	lowest deductible permitted for a federally qualified high deductible plan and the deductible
424	for the employer offered federally qualified high deductible plan;
425	(B) an out-of-pocket maximum that does not exceed three times the amount of the
426	annual deductible; and
427	(C) under which the employer pays 75% of the premium for the employee and the
428	dependents of the employee who work or reside in the state.
429	(f) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
430	(2) In accordance with Title 63G, Chapter 6, Utah Procurement Code, the director
431	may:
432	(a) subject to Subsection (3), enter into contracts for any work or professional services
433	which the division or the State Building Board may do or have done; and
434	(b) as a condition of any contract for architectural or engineering services, prohibit the
435	architect or engineer from retaining a sales or agent engineer for the necessary design work.
436	(3) (a) Except as provided in Subsection (3)(b), this Subsection (3) applies to all
437	design or construction contracts entered into by the division or the State Building Board on or
438	after July 1, 2009, [if] and:
439	[(i) the contract is for design or construction; and]
440	[(ii) (A)] (i) applies to a prime contractor if the prime contract is in the amount of
441	\$1,500,000 or greater; [or] and
442	[(B) a] (ii) applies to a subcontractor if the subcontract is in the amount of \$750,000
443	or greater.
444	(b) This Subsection (3) does not apply:
445	(i) if the application of this Subsection (3) jeopardizes the receipt of federal funds;
446	(ii) if the contract is a sole source contract;
447	(iii) if the contract is an emergency procurement; or
448	(iv) to a change order as defined in Section 63G-6-102, or a modification to a contract
449	when the contract does not meet the threshold required by Subsection (3)(a).

450 (c) A person who intentionally uses change orders or contract modifications to 451 circumvent the requirements of Subsection (3)(a) is guilty of an infraction. 452 (d) (i) A contractor subject to Subsection (3)(a) shall demonstrate to the director that 453 the contractor has and will maintain an offer of qualified health insurance coverage for the 454 contractor's employees and the employees' dependents. 455 (ii) If a subcontractor of the contractor is subject to Subsection (3)(a), the contractor 456 shall demonstrate to the director that the subcontractor has and will maintain an offer of 457 qualified health insurance coverage for the subcontractor's employees and the employees' 458 dependents. 459 (e) (i) (A) A contractor who fails to meet the requirements of Subsection (3)(d)(i) 460 during the duration of the contract is subject to penalties in accordance with administrative 461 rules adopted by the division under Subsection (3)(f). 462 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (3)(d)(ii). 463 464 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (3)(d)(ii) 465 during the duration of the contract is subject to penalties in accordance with administrative 466 rules adopted by the division under Subsection (3)(f). 467 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet 468 the requirements of Subsection (3)(d)(i). 469 (f) The division shall adopt administrative rules: 470 (i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act: 471 (ii) in coordination with: 472 (A) the Department of Environmental Quality in accordance with Section 19-1-206; 473 (B) the Department of Natural Resources in accordance with Section 79-2-404; 474 (C) a public transit district in accordance with Section 17B-2a-818.5; (D) the State Capitol Preservation Board in accordance with Section 63C-9-403; 475 476 (E) the Department of Transportation in accordance with Section 72-6-107.5; and

(F) the Legislature's Administrative Rules Review Committee; and

477

478	(iii) which establish:
479	(A) the requirements and procedures a contractor must follow to demonstrate to the
480	director compliance with this Subsection (3) which shall include:
481	(I) that a contractor will not have to demonstrate compliance with Subsection $[(5)(a)]$
482	or (b) (3)(d)(i) or (ii) more than twice in any 12-month period; and
483	(II) that the actuarially equivalent determination required in Subsection (1) is met by
484	the contractor if the contractor provides the department or division with a written statement of
485	actuarial equivalency from either:
486	(Aa) the Utah Insurance Department [or];
487	(Bb) an actuary selected by the contractor or the contractor's insurer; [and] or
488	(Cc) an underwriter who is responsible for developing the employer group's premium
489	rates;
490	(B) the penalties that may be imposed if a contractor or subcontractor intentionally
491	violates the provisions of this Subsection (3), which may include:
492	(I) a three-month suspension of the contractor or subcontractor from entering into
493	future contracts with the state upon the first violation;
494	(II) a six-month suspension of the contractor or subcontractor from entering into future
495	contracts with the state upon the second violation;
496	(III) an action for debarment of the contractor or subcontractor in accordance with
497	Section 63G-6-804 upon the third or subsequent violation; and
498	(IV) monetary penalties which may not exceed 50% of the amount necessary to
499	purchase qualified health insurance coverage for an employee and the dependents of an
500	employee of the contractor or subcontractor who was not offered qualified health insurance
501	coverage during the duration of the contract[-]; and
502	(C) a website on which the department shall post the benchmark for the qualified
503	health insurance coverage identified in Subsection (1)(e)(i).
504	(g) (i) In addition to the penalties imposed under Subsection (3)(f)(iii), a contractor or
505	subcontractor who intentionally violates the provisions of this section shall be liable to the

506	employee for health care costs [not covered by insurance.] that would have been covered by
507	qualified health insurance coverage.
508	(ii) An employer has an affirmative defense to a cause of action under Subsection
509	(3)(g)(i) if:
510	(A) the employer relied in good faith on a written statement of actuarial equivalency
511	provided by:
512	(I) an actuary; or
513	(II) an underwriter who is responsible for developing the employer group's premium
514	rates; or
515	(B) the department determines that compliance with this section is not required under
516	the provisions of Subsection (3)(b).
517	[(iii)] (iii) An employee has a private right of action only against the employee's
518	employer to enforce the provisions of this Subsection (3)(g).
519	(h) Any penalties imposed and collected under this section shall be deposited into the
520	Medicaid Restricted Account created by Section 26-18-402.
521	(i) The failure of a contractor or subcontractor to provide qualified health insurance
522	<u>coverage</u> as required by this section:
523	(i) may not be the basis for a protest or other action from a prospective bidder, offeror
524	or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
525	Legal and Contractual Remedies; and
526	(ii) may not be used by the procurement entity or a prospective bidder, offeror, or
527	contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
528	or construction.
529	(4) The judgment of the director as to the responsibility and qualifications of a bidder
530	is conclusive, except in case of fraud or bad faith.
531	(5) The division shall make all payments to the contractor for completed work in
532	accordance with the contract and pay the interest specified in the contract on any payments
533	that are late.

534	(6) If any payment on a contract with a private contractor to do work for the division
535	or the State Building Board is retained or withheld, it shall be retained or withheld and
536	released as provided in Section 13-8-5.
537	Section 5. Section 63C-9-403 is amended to read:
538	63C-9-403. Contracting power of executive director Health insurance
539	coverage.
540	(1) For purposes of this section:
541	(a) "Employee" means an "employee," "worker," or "operative" as defined in Section
542	34A-2-104 who:
543	(i) works at least 30 hours per calendar week; and
544	(ii) meets employer eligibility waiting requirements for health care insurance which
545	may not exceed the first of the calendar month following 90 days from the date of hire.
546	(b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.
547	(c) "Qualified health insurance coverage" means [a health benefit plan that] at the time
548	the contract is entered into or renewed:
549	[(i) (A) provides coverage that is actuarially equivalent to the current benefit plan
550	determined by the Children's Health Insurance Program under Section 26-40-106; and]
551	[(B) under which the employer pays at least 50% of the premium for the employee and
552	the dependents of the employee;]
553	[(ii) (A) is a federally qualified high deductible health plan that has:]
554	[(I) the lowest deductible permitted for a federally qualified high deductible health
555	<del>plan; and</del> ]
556	[(II) an out of pocket maximum that does not exceed three times the amount of the
557	annual deductible; and]
558	[(B) under which the employer pays 75% of the premium for the employee and the
559	dependents of the employee; or]
560	[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan
561	determined under Subsection (1)(c)(i); and]

562	[(B) under which the employer pays at least 75% of the premium of the employee and
563	the dependents of the employee.]
564	(i) a health benefit plan and employer contribution level with a combined actuarial
565	value at least actuarially equivalent to the combined actuarial value of the benchmark plan
566	determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a),
567	and a contribution level of 50% of the premium for the employee and the dependents of the
568	employee who reside or work in the state, in which:
569	(A) the employer pays at least 50% of the premium for the employee and the
570	dependents of the employee who reside or work in the state; and
571	(B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):
572	(I) rather that the benchmark plan's deductible, and the benchmark plan's
573	out-of-pocket maximum based on income levels:
574	(Aa) the deductible is \$750 per individual and \$2,250 per family; and
575	(Bb) the out-of-pocket maximum is \$3,000 per individual and \$9,000 per family;
576	(II) dental coverage is not required; and
577	(III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do
578	not apply; or
579	(ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a
580	deductible that is either:
581	(I) the lowest deductible permitted for a federally qualified high deductible health
582	plan; or
583	(II) a deductible that is higher than the lowest deductible permitted for a federally
584	qualified high deductible health plan, but includes an employer contribution to a health
585	savings account in a dollar amount at least equal to the dollar amount difference between the
586	lowest deductible permitted for a federally qualified high deductible plan and the deductible
587	for the employer offered federally qualified high deductible plan;
588	(B) an out-of-pocket maximum that does not exceed three times the amount of the
589	annual deductible; and

590	(C) under which the employer pays 75% of the premium for the employee and the
591	dependents of the employee who work or reside in the state.
592	(d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
593	(2) (a) Except as provided in Subsection (3), this section applies to [all contracts] a
594	design or construction contract entered into by the board or on behalf of the board on or after
595	July 1, 2009, [if:] and to a prime contractor or a subcontractor in accordance with Subsection
596	<u>(2)(b).</u>
597	[(a) the contract is for design or construction; and]
598	(b) (i) A prime contractor is subject to this section if the prime contract is in the
599	amount of \$1,500,000 or greater[; or].
600	(ii) A subcontractor is subject to this section if a subcontract is in the amount of
601	\$750,000 or greater.
602	(3) This section does not apply if:
603	(a) the application of this section jeopardizes the receipt of federal funds;
604	(b) the contract is a sole source contract; or
605	(c) the contract is an emergency procurement.
606	(4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
607	or a modification to a contract, when the contract does not meet the initial threshold required
608	by Subsection (2).
609	(b) A person who intentionally uses change orders or contract modifications to
610	circumvent the requirements of Subsection (2) is guilty of an infraction.
611	(5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive
612	director that the contractor has and will maintain an offer of qualified health insurance
613	coverage for the contractor's employees and the employees' dependents during the duration of
614	the contract.
615	(b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor
616	shall demonstrate to the executive director that the subcontractor has and will maintain an
617	offer of qualified health insurance coverage for the subcontractor's employees and the

employees' dependents during the duration of the contract.

- (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the division under Subsection (6).
- (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (5)(b).
- (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).
- (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (5)(a).
  - (6) The department shall adopt administrative rules:
- (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- (b) in coordination with:

619

620

621

622

623

624

625

626

627

628

629

630

636

639

640

641

642

643

644

645

- (i) the Department of Environmental Quality in accordance with Section 19-1-206;
- (ii) the Department of Natural Resources in accordance with Section 79-2-404;
- 634 (iii) the State Building Board in accordance with Section 63A-5-205;
- (iv) a public transit district in accordance with Section 17B-2a-818.5;
  - (v) the Department of Transportation in accordance with Section 72-6-107.5; and
- (vi) the Legislature's Administrative Rules Review Committee; and
- 638 (c) which establish:
  - (i) the requirements and procedures a contractor must follow to demonstrate to the executive director compliance with this section which shall include:
  - (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or (b) more than twice in any 12-month period; and
  - (B) that the actuarially equivalent determination required in Subsection (1) is met by the contractor if the contractor provides the department or division with a written statement of actuarial equivalency from either:

646	(I) the Utah Insurance Department [or];
647	(II) an actuary selected by the contractor or the contractor's insurer; $[and]$ or
648	(III) an underwriter who is responsible for developing the employer group's premium
649	rates;
650	(ii) the penalties that may be imposed if a contractor or subcontractor intentionally
651	violates the provisions of this section, which may include:
652	(A) a three-month suspension of the contractor or subcontractor from entering into
653	future contracts with the state upon the first violation;
654	(B) a six-month suspension of the contractor or subcontractor from entering into
655	future contracts with the state upon the second violation;
656	(C) an action for debarment of the contractor or subcontractor in accordance with
657	Section 63G-6-804 upon the third or subsequent violation; and
658	(D) monetary penalties which may not exceed 50% of the amount necessary to
659	purchase qualified health insurance coverage for employees and dependents of employees of
660	the contractor or subcontractor who were not offered qualified health insurance coverage
661	during the duration of the contract[-]; and
662	(iii) a website on which the department shall post the benchmark for the qualified
663	health insurance coverage identified in Subsection (1)(c)(i).
664	(7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or
665	subcontractor who <u>intentionally</u> violates the provisions of this section shall be liable to the
666	employee for health care costs [not covered by insurance.] that would have been covered by
667	qualified health insurance coverage.
668	(ii) An employer has an affirmative defense to a cause of action under Subsection
669	<u>(7)(a)(i) if:</u>
670	(A) the employer relied in good faith on a written statement of actuarial equivalency
671	provided by:
672	(I) an actuary; or
673	(II) an underwriter who is responsible for developing the employer group's premium

674	rates; or
675	(B) the department determines that compliance with this section is not required under
676	the provisions of Subsection (3) or (4).
677	(b) An employee has a private right of action only against the employee's employer to
678	enforce the provisions of this Subsection (7).
679	(8) Any penalties imposed and collected under this section shall be deposited into the
680	Medicaid Restricted Account created in Section 26-18-402.
681	(9) The failure of a contractor or subcontractor to provide <u>qualified</u> health insurance
682	coverage as required by this section:
683	(a) may not be the basis for a protest or other action from a prospective bidder, offeror,
684	or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
685	Legal and Contractual Remedies; and
686	(b) may not be used by the procurement entity or a prospective bidder, offeror, or
687	contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
688	or construction.
689	Section 6. Section <b>72-6-107.5</b> is amended to read:
690	72-6-107.5. Construction of improvements of highway Contracts Health
691	insurance coverage.
692	(1) For purposes of this section:
693	(a) "Employee" means an "employee," "worker," or "operative" as defined in Section
694	34A-2-104 who:
695	(i) works at least 30 hours per calendar week; and
696	(ii) meets employer eligibility waiting requirements for health care insurance which
697	may not exceed the first day of the calendar month following 90 days from the date of hire.
698	(b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.
699	(c) "Qualified health insurance coverage" means [a health benefit plan that] at the time
700	the contract is entered into or renewed:
701	[(i) (A) provides coverage that is actuarially equivalent to the current benefit plan

702	determined by the Children's Health Insurance Program under Section 26-40-106; and]
703	[(B) under which the employer pays at least 50% of the premium for the employee and
704	the dependents of the employee;]
705	[(ii) (A) is a federally qualified high deductible health plan that has:]
706	[(I) the lowest deductible permitted for a federally qualified high deductible health
707	plan; and]
708	[(II) an out of pocket maximum that does not exceed three times the amount of the
709	annual deductible; and]
710	[(B) under which the employer pays 75% of the premium for the employee and the
711	dependents of the employee; or]
712	[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan
713	determined under Subsection (1)(c)(i); and]
714	[(B) under which the employer pays at least 75% of the premium of the employee and
715	the dependents of the employee.]
716	(i) a health benefit plan and employer contribution level with a combined actuarial
717	value at least actuarially equivalent to the combined actuarial value of the benchmark plan
718	determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a),
719	and a contribution level of 50% of the premium for the employee and the dependents of the
720	employee who reside or work in the state, in which:
721	(A) the employer pays at least 50% of the premium for the employee and the
722	dependents of the employee who reside or work in the state; and
723	(B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):
724	(I) rather that the benchmark plan's deductible, and the benchmark plan's
725	out-of-pocket maximum based on income levels:
726	(Aa) the deductible is \$750 per individual and \$2,250 per family; and
727	(Bb) the out-of-pocket maximum is \$3,000 per individual and \$9,000 per family;
728	(II) dental coverage is not required; and
729	(III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do

730	not apply; or
731	(ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a
732	deductible that is either:
733	(I) the lowest deductible permitted for a federally qualified high deductible health
734	plan; or
735	(II) a deductible that is higher than the lowest deductible permitted for a federally
736	qualified high deductible health plan, but includes an employer contribution to a health
737	savings account in a dollar amount at least equal to the dollar amount difference between the
738	lowest deductible permitted for a federally qualified high deductible plan and the deductible
739	for the employer offered federally qualified high deductible plan;
740	(B) an out-of-pocket maximum that does not exceed three times the amount of the
741	annual deductible; and
742	(C) under which the employer pays 75% of the premium for the employee and the
743	dependents of the employee who work or reside in the state.
744	(d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
745	(2) (a) Except as provided in Subsection (3), this section applies to [all] contracts
746	entered into by the department on or after July 1, 2009, for construction or design of highways
747	[if:] and to a prime contractor or to a subcontractor in accordance with Subsection (2)(b).
748	[(a)] (b) (i) A prime contractor is subject to this section if the prime contract is in the
749	amount of \$1,500,000 or greater[; or].
750	[(b)] (ii) A subcontractor is subject to this section if a subcontract is in the amount of
751	\$750,000 or greater.
752	(3) This section does not apply if:
753	(a) the application of this section jeopardizes the receipt of federal funds;
754	(b) the contract is a sole source contract; or
755	(c) the contract is an emergency procurement.
756	(4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
757	or a modification to a contract, when the contract does not meet the initial threshold required

758	by Subsection	(2)
~ ~	o, bacsedion	·-,

759

760

761

762

763

764

765

766

767

768

769

770

771

772

773

774

775

776

777

778

779

(b) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection (2) is guilty of an infraction.

- (5) (a) A contractor subject to Subsection (2) shall demonstrate to the department that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents during the duration of the contract.
- (b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall demonstrate to the department that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the contract.
- (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).
- (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (5)(b).
- (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).
- (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (5)(a).
  - (6) The department shall adopt administrative rules:
  - (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- 780 (b) in coordination with:
- (i) the Department of Environmental Quality in accordance with Section 19-1-206;
- 782 (ii) the Department of Natural Resources in accordance with Section 79-2-404;
- 783 (iii) the State Building Board in accordance with Section 63A-5-205;
- 784 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;
- 785 (v) a public transit district in accordance with Section 17B-2a-818.5; and

786	(vi) the Legislature's Administrative Rules Review Committee; and
787	(c) which establish:
788	(i) the requirements and procedures a contractor must follow to demonstrate to the
789	department compliance with this section which shall include:
790	(A) that a contractor will not have to demonstrate compliance with Subsection (5)(a)
791	or (b) more than twice in any 12-month period; and
792	(B) that the actuarially equivalent determination required in Subsection (1) is met by
793	the contractor if the contractor provides the department or division with a written statement of
794	actuarial equivalency from either:
795	(I) the Utah Insurance Department [or];
796	(II) an actuary selected by the contractor or the contractor's insurer; [and] or
797	(III) an underwriter who is responsible for developing the employer group's premium
798	rates;
799	(ii) the penalties that may be imposed if a contractor or subcontractor intentionally
800	violates the provisions of this section, which may include:
801	(A) a three-month suspension of the contractor or subcontractor from entering into
802	future contracts with the state upon the first violation;
803	(B) a six-month suspension of the contractor or subcontractor from entering into
804	future contracts with the state upon the second violation;
805	(C) an action for debarment of the contractor or subcontractor in accordance with
806	Section 63G-6-804 upon the third or subsequent violation; and
807	(D) monetary penalties which may not exceed 50% of the amount necessary to
808	purchase qualified health insurance coverage for an employee and a dependent of the
809	employee of the contractor or subcontractor who was not offered qualified health insurance
810	coverage during the duration of the contract[:]; and
811	(iii) a website on which the department shall post the benchmark for the qualified
812	health insurance coverage identified in Subsection (1)(c)(i).
813	(7) (a) (i) In addition to the penalties imposed under Subsection (6), a contractor or

H.B. 20 **Enrolled Copy** 814 subcontractor who intentionally violates the provisions of this section shall be liable to the 815 employee for health care costs [not covered by insurance.] that would have been covered by 816 qualified health insurance coverage. 817 (ii) An employer has an affirmative defense to a cause of action under Subsection 818 (7)(a)(i) if: 819 (A) the employer relied in good faith on a written statement of actuarial equivalency 820 provided by: 821 (I) an actuary; or 822 (II) an underwriter who is responsible for developing the employer group's premium 823 rates; or (B) the department determines that compliance with this section is not required under 824 825 the provisions of Subsection (3) or (4). 826 (b) An employee has a private right of action only against the employee's employer to enforce the provisions of this Subsection (7). 827 828 (8) Any penalties imposed and collected under this section shall be deposited into the 829 Medicaid Restricted Account created in Section 26-18-402. 830 (9) The failure of a contractor or subcontractor to provide qualified health insurance 831 coverage as required by this section: 832 (a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8, 833 834 Legal and Contractual Remedies; and 835 (b) may not be used by the procurement entity or a prospective bidder, offeror, or 836 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design

79-2-404. Contracting powers of department -- Health insurance coverage.(1) For purposes of this section:(a) "Employee" means an "employee," "worker," or "operative" as defined in Section

Section 7. Section **79-2-404** is amended to read:

837

838

839

840

841

or construction.

842	34A-2-104 who:
843	(i) works at least 30 hours per calendar week; and
844	(ii) meets employer eligibility waiting requirements for health care insurance which
845	may not exceed the first day of the calendar month following 90 days from the date of hire.
846	(b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.
847	(c) "Qualified health insurance coverage" means [a health benefit plan that] at the time
848	the contract is entered into or renewed:
849	[(i) (A) provides coverage that is actuarially equivalent to the current benefit plan
850	determined by the Children's Health Insurance Program under Section 26-40-106; and]
851	[(B) under which the employer pays at least 50% of the premium for the employee and
852	the dependents of the employee;]
853	[(ii) (A) is a federally qualified high deductible health plan that has:]
854	[(I) the lowest deductible permitted for a federally qualified high deductible health
855	plan; and]
856	[(II) an out of pocket maximum that does not exceed three times the amount of the
857	annual deductible; and]
858	[(B) under which the employer pays 75% of the premium for the employee and the
859	dependents of the employee; or]
860	[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan
861	determined under Subsection (1)(c)(i); and]
862	[(B) under which the employer pays at least 75% of the premium of the employee and
863	the dependents of the employee.]
864	(i) a health benefit plan and employer contribution level with a combined actuarial
865	value at least actuarially equivalent to the combined actuarial value of the benchmark plan
866	determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a),
867	and a contribution level of 50% of the premium for the employee and the dependents of the
868	employee who reside or work in the state, in which:
869	(A) the employer pays at least 50% of the premium for the employee and the

870	dependents of the employee who reside or work in the state; and
871	(B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):
872	(I) rather that the benchmark plan's deductible, and the benchmark plan's
873	out-of-pocket maximum based on income levels:
874	(Aa) the deductible is \$750 per individual and \$2,250 per family; and
875	(Bb) the out-of-pocket maximum is \$3,000 per individual and \$9,000 per family;
876	(II) dental coverage is not required; and
877	(III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do
878	not apply; or
879	(ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a
880	deductible that is either:
881	(I) the lowest deductible permitted for a federally qualified high deductible health
882	plan; or
883	(II) a deductible that is higher than the lowest deductible permitted for a federally
884	qualified high deductible health plan, but includes an employer contribution to a health
885	savings account in a dollar amount at least equal to the dollar amount difference between the
886	lowest deductible permitted for a federally qualified high deductible plan and the deductible
887	for the employer offered federally qualified high deductible plan;
888	(B) an out-of-pocket maximum that does not exceed three times the amount of the
889	annual deductible; and
890	(C) under which the employer pays 75% of the premium for the employee and the
891	dependents of the employee who work or reside in the state.
892	(d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
893	(2) (a) Except as provided in Subsection (3), this section applies [to all contracts] a
894	design or construction contract entered into by, or delegated to, the department or a division,
895	board, or council of the department on or after July 1, 2009, [if:] and to a prime contractor or
896	to a subcontractor in accordance with Subsection (2)(b).
897	[(a) the contract is for design or construction; and]

898	(b) (i) A prime contractor is subject to this section if the prime contract is in the
899	amount of \$1,500,000 or greater[ <del>; or</del> ].
900	(ii) A subcontractor is subject to this section if a subcontract is in the amount of
901	\$750,000 or greater.
902	(3) This section does not apply to contracts entered into by the department or a
903	division, board, or council of the department if:
904	(a) the application of this section jeopardizes the receipt of federal funds;
905	(b) the contract or agreement is between:
906	(i) the department or a division, board, or council of the department; and
907	(ii) (A) another agency of the state;
908	(B) the federal government;
909	(C) another state;
910	(D) an interstate agency;
911	(E) a political subdivision of this state; or
912	(F) a political subdivision of another state; or
913	(c) the contract or agreement is:
914	(i) for the purpose of disbursing grants or loans authorized by statute;
915	(ii) a sole source contract; or
916	(iii) an emergency procurement.
917	(4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
918	or a modification to a contract, when the contract does not meet the initial threshold required
919	by Subsection (2).
920	(b) A person who intentionally uses change orders or contract modifications to
921	circumvent the requirements of Subsection (2) is guilty of an infraction.
922	(5) (a) A contractor subject to Subsection (2)(b)(i) shall demonstrate to the department
923	that the contractor has and will maintain an offer of qualified health insurance coverage for the
924	contractor's employees and the employees' dependents during the duration of the contract.

(b) If a subcontractor of the contractor is subject to Subsection (2)(b)(ii), the

925

926

927

928

929

930

931

932

933

934

935

936

937

938

939

940

941

942

943

944

945

946

947

948

949

950

951

952

953

contractor shall demonstrate to the department that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the contract. (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6). (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (5)(b). (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6). (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (5)(a). (6) The department shall adopt administrative rules: (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; (b) in coordination with: (i) the Department of Environmental Quality in accordance with Section 19-1-206; (ii) a public transit district in accordance with Section 17B-2a-818.5; (iii) the State Building Board in accordance with Section 63A-5-205: (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403; (v) the Department of Transportation in accordance with Section 72-6-107.5; and (vi) the Legislature's Administrative Rules Review Committee; and (c) which establish: (i) the requirements and procedures a contractor must follow to demonstrate compliance with this section to the department which shall include: (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a)

(B) that the actuarially equivalent determination required in Subsection (1) is met by

or (b) more than twice in any 12-month period; and

954	the contractor if the contractor provides the department or division with a written statement of
955	actuarial equivalency from either:
956	(I) the Utah Insurance Department [or];
957	(II) an actuary selected by the contractor or the contractor's insurer; [and] or
958	(III) an underwriter who is responsible for developing the employer group's premium
959	rates;
960	(ii) the penalties that may be imposed if a contractor or subcontractor intentionally
961	violates the provisions of this section, which may include:
962	(A) a three-month suspension of the contractor or subcontractor from entering into
963	future contracts with the state upon the first violation;
964	(B) a six-month suspension of the contractor or subcontractor from entering into
965	future contracts with the state upon the second violation;
966	(C) an action for debarment of the contractor or subcontractor in accordance with
967	Section 63G-6-804 upon the third or subsequent violation; and
968	(D) monetary penalties which may not exceed 50% of the amount necessary to
969	purchase qualified health insurance coverage for an employee and a dependent of an employee
970	of the contractor or subcontractor who was not offered qualified health insurance coverage
971	during the duration of the contract[-]; and
972	(iii) a website on which the department shall post the benchmark for the qualified
973	health insurance coverage identified in Subsection (1)(c)(i).
974	(7) (a) (i) In addition to the penalties imposed under Subsection (6), a contractor or
975	subcontractor who <u>intentionally</u> violates the provisions of this section shall be liable to the
976	employee for health care costs [not covered by insurance.] that would have been covered by
977	qualified health insurance coverage.
978	(ii) An employer has an affirmative defense to a cause of action under Subsection
979	(7)(a)(i) if:
980	(A) the employer relied in good faith on a written statement of actuarial equivalency
981	provided by:

982	(I) an actuary; or
983	(II) an underwriter who is responsible for developing the employer group's premium
984	rates; or
985	(B) the department determines that compliance with this section is not required under
986	the provisions of Subsection (3) or (4).
987	(b) An employee has a private right of action only against the employee's employer to
988	enforce the provisions of this Subsection (7).
989	(8) Any penalties imposed and collected under this section shall be deposited into the
990	Medicaid Restricted Account created in Section 26-18-402.
991	(9) The failure of a contractor or subcontractor to provide <u>qualified</u> health insurance
992	coverage as required by this section:
993	(a) may not be the basis for a protest or other action from a prospective bidder, offeror
994	or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
995	Legal and Contractual Remedies; and
996	(b) may not be used by the procurement entity or a prospective bidder, offeror, or
997	contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
998	or construction.